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REMARKS

Claims 12-16, 19-43 and 46-108 are pending. Applicant cancelled claims 17, 18, 44 and 45. Applicant amended claims 19 and 21 and have added new claims 47-108. No new matter has been added.

The Examiner objected to claims 17, 18, 21 and 45. Applicant has cancelled claims 17, 18 and 45 and has amended claim 21 as suggested by the Examiner.

The Examiner rejected claims 44 and 45 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter of the invention. As to claim 44, Applicant submits that there is nothing unclear about the claim as written and it is supported by the specification. Applicant, however, has cancelled claims 44 and 45, thereby mooted the rejection.

The Examiner rejected claims 12, 13, 15, 17-21, 23-25 and 44-46 under 35 U.S.C. § 102(e) as being anticipated by Glines (U.S. Patent No. 6,190,311). Applicant traverses the rejection. Applicant has amended claim 21 to claim a retractor that includes "at least one arm having a cavity, a first blade attached to the at least one arm for retracting tissue, and a suture stay removably disposed within the cavity, the suture stay having at least one slot." Applicant submits that claim 21 and its dependent claims are patentable over Glines.

As the Examiner recognizes in the Office Action, Glines does not teach or suggest the retractor claimed in claim 21. Instead, Glines describes a retractor 10 having arms 16 and 18, and an instrument platform 50 that snaps into openings 47 and 49 of arms 16 and 18. See Glines, Figure 1, col 3:38-43 and col 4:14-18. Instrument platform 50 includes a plurality of suture grips 58 formed in the surface of shell body 52. Glines, col 4, lines 53-65. Thus, suture grips 58 are not taught as being disposed within the openings 47 or 49. Glines does teach that platform 50 is snapped into arms 16 and 18 and thus is "at least partially disposed within the arm". The Examiner construes platform 50 of Glines to be the claimed suture stay. Applicant submits, however, that Glines does not teach or suggest that platform 50 is be removably disposed within

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the cavity. Such a construction is not possible as openings 47 and 49 are not configured to accept platform 50. As a result, Applicant submits that Glines does not anticipate amended claim 21 or any of the claims that depend from claim 21, and request that the Examiner withdraw the rejection.

Furthermore, Applicants have added independent claims 47, 79 and 108, and submit that these independent claims and the claims that depend from them also define over Glines.

The Examiner rejected claims 12-21, 23-25 and 44-46 under 35 U.S.C. § 102(e) as being anticipated by Green (U.S. Patent No. 6,290,644). Applicant traverses the rejection. Green is not citable as prior art against the current application. This application claims priority to U.S. Serial No. 09/293,630, filed on April 15, 1999. Green was filed on May 4, 1999, and as a result does not fulfill the requirements for prior art under 35 U.S.C. § 102(e); i.e., it is not a patent granted on an application filed in the United States before the invention thereof by the applicant. Green claims priority as a continuation-in-part to an application that was filed on September 16, 1997, and later granted as U.S. Patent No. 6,036,641. That earlier application, however, does not disclose the subject matter upon which the Examiner bases his argument. In other words, Figures 1-12 and 55 and the text describing those figures is not included in the 6,036,641 patent and therefore cannot claim an earlier priority than the current application. Applicant therefore requests that this rejection be withdrawn.


Applicants hereby grant permission to charge any additional, necessary fees, including claim fees, during the course of the prosecution of this application to Applicant's deposit account no. 10-0750/HRT-0278/BST.

If the Examiner believes that a discussion of the pending claims would expedite the prosecution of this application, he is invited to contact the undersigned.

Respectfully submitted,

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By: _____


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